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9                   UNITED STATES DISTRICT COURT  
10                   WESTERN DISTRICT OF WASHINGTON  
11                   AT SEATTLE

12 EON-NET L.P.,

13                   Plaintiff,

14                   v.

15 FLAGSTAR BANCORP,

16                   Defendant.

CASE NO. C05-2129RSM

ORDER ON MOTION FOR STAY OF  
JUDGMENT

17                   On May 17, 2010, the Court directed the Clerk to enter judgment in favor of defendant in the  
18 amount of \$631,135.18, representing the amount of Rule 11 sanctions and attorneys' fees pursuant to 35  
19 U.S.C. § 285 due defendants. The judgment has not yet been entered. Plaintiff has moved for a stay  
20 of judgment, citing Local Rule CR 7(d)(2)(A), which applies to motions for relief from deadline, not a  
21 stay. Plaintiff asks for a stay of judgment pending appeal, arguing that it is very likely that this Court's  
22 Orders will be overturned on appeal, and also that plaintiff's counsel will be irreparably harmed because  
23 he does not have the funds to pay the judgment or post a bond. Dkt. # 196. The bulk of plaintiff's  
24 motion amounts to a motion for reconsideration, re-arguing matters that have already been decided  
25 adversely to plaintiff.

26                   In opposing the motion, defendant correctly asserts that plaintiff has relied on the wrong legal

27 ORDER ON MOTION FOR STAY OF  
28 JUDGMENT - 1

1 standard for requesting a stay of judgment, and the motion should have been brought as a request for  
2 stay by supersedeas bond, pursuant to F.RCiv.P. 62(d). Defendant also argues that plaintiff has not  
3 made a showing of irreparable harm, as no evidence was offered to support that claim.

4 In responding to the irreparable harm argument, plaintiff filed a reply declaration of counsel,  
5 stating in full that;

6 I, Jean-Marc Zimmerman, declare as follows:

- 7 1. I am an attorney-at-law licensed in the State of New Jersey and am counsel for Eon-Net, L.P.  
in the above-entitled action.
- 8 2. I do not have the funds to pay the sanctions amount or to pay for a bond.

9 3. The Sanctions and Monetary Orders have already harmed me by costing [sic] me to lose  
business. Further, they have been cited by adversaries in non-Eon-Net cases to try and harm  
me and my client.

10 I declare under the laws of the United States that the foregoing is true and correct.

11 Dkt. # 198-2. The declaration is signed by counsel but is unsworn.<sup>1</sup> It is also not accompanied by any  
12 documentary evidence. The Court finds the declaration not credible with respect to counsel's alleged  
13 poverty. Counsel filed this action as a partner in the firm of Zimmerman, Levi, and Korsinsky, LLP,  
14 and litigated it as a member of the firm. On December 23, 2009, after defendant's motion for attorneys'  
15 fees was fully briefed but before the Court ruled, counsel filed a "Notice of Name Change." Dkt. # 186.  
16 The Notice advised the Court and opposing party that his firm name had changed to Zimmerman &  
17 Levi, LLP, but did not state when the change occurred. Counsel continues to use an e-mail address from  
18 his former firm ([jmzimmerman@zlk.com](mailto:jmzimmerman@zlk.com)) and has signed orders in other cases with the Zimmerman,  
19 Levi & Korsinsky LLP signature subsequent to the date of the "name change". See, *Glory Licensing*  
20 *LLC v. Best Buy Co., Inc.*, Cause No. 2:09-cv-04858-WJM-MF, Dkt. # 11 (D.N.J., February 10, 2010).  
21 The three-partner firm name appears on the docket of another case filed in the New Jersey District Court  
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24  
25 <sup>1</sup>Counsel was advised in a previous Order that such a declaration is insufficient to meet the  
26 requirements of 28 U.S.C. § 1746 because it lacks the requisite "under penalty of perjury" language.  
27 Dkt. # 195, p. 9.

1 as recently as June 11, 2010. *Millennium, L.P. v. Digitech Systems, Inc.*, Cause No. 1:10-cv-04595-  
2 PAC. These facts raise serious questions regarding counsel's status as a member of the firm.

3 Plaintiff's Local Rule CR 7(d)(2)(A) motion for a stay pending appeal is accordingly DENIED,  
4 without prejudice to renewal as a motion for stay by supersedeas bond.

5 The Clerk shall forthwith enter judgment in favor of defendant in the amount of \$631,135.18 in  
6 accordance with the Supplemental Order on Motion for Fees and Costs, Dkt. # 195.

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8 Dated this 21 day of June 2010.

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10 RICARDO S. MARTINEZ  
11 UNITED STATES DISTRICT JUDGE  
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ORDER ON MOTION FOR STAY OF  
JUDGMENT - 1